

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JULY 25, 1995

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0598

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE INTEREST OF
AUBREONA S. G., a person
under the age of 18:**

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

MICHAEL G.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Pierce County:
ROBERT W. WING, Judge. *Affirmed.*

CANE, P.J. Michael G. appeals an order transferring legal custody of his daughter, Aubreona G. (d/o/b 5/11/94), to the Pierce County Department of Human Services. Michael's sole issue on appeal is whether the trial court erred by transferring custody because the record contained insufficient facts to support the trial court's action. Because this court concludes that there is sufficient evidence in the record to support the trial court's decision, the order of the trial court is affirmed.

Michael is the natural father of Aubreona. Michael was adopted at the age of fourteen months and reports being severely abused by his adoptive parents. He has an extensive juvenile and criminal record. Michael was convicted of battery to a child under the age of thirteen, a class E felony, in Indiana on November 2, 1993. He was sentenced to two years in prison, but served thirty-nine days and was then released to a halfway house. Michael was released from the halfway house in Indiana after six months on May 16, 1994.

Lora G. is Aubreona's natural mother, and Lora is from a dysfunctional family. Her mother was accused of neglecting Lora and her siblings while they were children. Lora's mother once fled Wisconsin to avoid an action against her for neglect. Lora has also spent a significant amount of her childhood in foster care in a number of different states. Four of her siblings are currently in foster homes due to neglect. Lora has a borderline intellect and, as a result, requires special teaching and is easily manipulated. She has a limited formal education, attending Castle High School until the eleventh grade but dropping out due to pregnancy. Lora later re-enrolled in school at Ellsworth High School but again dropped out because of pregnancy.

Michael and Lora have experienced marital difficulties. At the time of Aubreona's abuse, they had separated but were attempting to work things out. At that time, Michael was living in Red Wing, Minnesota, with a woman and her three children. That residence was notorious for holding loud parties where illegal drugs and alcohol were used. The home was observed to be "disheveled and unkept." At the time of the dispositional hearing, Michael was again living with Lora in Ellsworth, Wisconsin. However, Lora had filed for a divorce.¹

THE ABUSE

On June 20, 1994, Michael expressed his desire to spend a few days with Aubreona. He picked her up from Lora and returned to Red Wing. When Michael took the child, she had no visible bruises or cuts.

¹ Lora filed for divorce on September 13, 1994, three days before the dispositional hearing.

Michael abused Aubreona on June 22, 1994. Michael has stated that he was drinking that day. He initially stated that he had kicked the child on his way off the couch. He later stated:

I accidentally kicked her in the head. Well, sometime later on than that, later on she must have woke up and I must have fucking hit her. I don't know why, you know, I think I guess because she was crying or she was hungry I guess and I was still hung over I guess.

Shortly after the incident Lora arrived to pick up Aubreona. At that time she noticed that the child had an abrasion and bruise on her right chin, as well as a hand-sized red mark on the left side of her face. Lora took the child to the police department. The child was then taken to the hospital to receive treatment.

On June 23 and 24, 1995, the Pierce County Department of Human Services received several referrals concerning Michael and Lora's child Aubreona. These referrals alleged that Michael had physically abused his daughter and expressed concern over the mother's ability to properly care for the child. The department investigated the reports and Aubreona was taken into Pierce County custody on June 25, 1995.

The county filed a CHIPS petition with the court on June 27, 1995. Both parents initially opposed the petition, but after receiving advice from counsel, Michael and Lora admitted to the petition. The court adjudged Aubreona to be a child in need of protective services.

The dispositional hearing was held on September 16, 1994. The trial court adopted the Department of Human Services recommended dispositional order, including transfer of legal custody of the child to the department. Michael objected only to the provision of the order that transferred custody. Michael argued that taking custody from him was unnecessary. He maintained that there were less intrusive ways to insure Aubreona's safety. However, the trial court stated that the child's best interests could only be protected by transferring legal custody, and entered an order to that effect.

DISCUSSION

The disposition of a case in which a child is judged to be in need of protective services is a matter within the trial court's discretion. Section 48.345, STATS. The trial court has a large number of dispositional options, § 48.34, STATS., including the transfer of legal custody when rehabilitation or treatment cannot be voluntarily achieved. Section 48.34(4), STATS. When determining what action to take, the child's best interests are of paramount concern to the court. Section 48.01(2), STATS. The trial court has wide discretion in deciding what is in the child's best interests. *State ex rel. Hannon v. Eisler*, 270 Wis. 469, 479, 71 N.W.2d 376, 382 (1955). The trial court's exercise of discretion will be upheld on appeal if it was the product of a rational mental process and was based upon facts appearing in the record. *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20 (1981).

Michael asserts that there is insufficient evidence in the record to justify the trial court's decision to transfer custody of Aubreona to the county. He claims that the trial court's determination that he or the mother may flee with the child was not the product of a rational thought process. We are not persuaded.

The record contains the following evidence: (1) Michael had been convicted of felony child abuse; (2) Michael abused Aubreona less than two months after his release from custody for child abuse; (3) Michael had a history of movement from one state to another; (4) Lora had a history of movement from state to state; (5) Lora was neglected as a child and has no positive parenting role model; (6) Lora lived in a community near the border of Wisconsin; (7) Lora had a borderline intellect and was easily manipulated; and (8) Lora's mother had once fled the state to avoid state action for child neglect.

The court stated that it feared the parents might flee from the state,² and that Aubreona's best interest was its primary concern. The trial court explained that it was not taking this action to punish either parent. However, the court also mentioned its concerns regarding Michael and Lora's current

² The court noted that absent a transfer of custody, the family would be beyond the reach of the court. The trial court also noted that if custody was transferred, flight from the state would be a felony, and thus extradition back to Wisconsin would be possible.

living arrangements and wondered whether the divorce would be pursued. The court added that it believed Lora was sincere in her desire to care for her child. The court stated that it only wanted to guarantee Aubreona's safety and well-being and it believed the best way to accomplish this goal was by temporarily transferring custody of Aubreona to the county.

It is clear that the trial court reached its decision carefully. The trial court considered the interests of all the parties. It considered the effects of its actions on the relationship between the child and its parents. However, the court still stated that it felt that transfer of custody was necessary to guarantee the child's safety and well-being. This court concludes that the trial court's exercise of discretion was based upon sufficient evidence and was the product of a rational mental process.

By the Court. – Order affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.